

ENTERED

November 30, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

UNITED STATES OF AMERICA,

§

Plaintiff,

§

VS.

§

0.501 ACRES OF LAND, more or less, in
HIDALGO COUNTY, TEXAS; JOHNNY
R. HART; JENNIFER L. HART; and U.S.
SMALL BUSINESS ADMINISTRATION,

§ CIVIL ACTION NO. 7:20-cv-00066

§

Defendants.

§

ORDER

The Court now considers the parties’ “Joint Motion to Extend Scheduling Order Deadlines”¹ and “Joint Motion for Leave to File an Amended Declaration of Taking.”² Because the motions are joint, the Court considers them as soon as practicable.³

The Court first turns to the joint motion to file an amended declaration of taking. Plaintiff United States represents “that the original taking was not sufficient to proceed with construction and additionally not sufficient to accommodate the agreement between the landowner and the government for access to landowner’s riverside remainder.”⁴ The parties explain that they have negotiated for months to settle this eminent domain proceeding, but new information came to light after the Court granted the United States possession on May 14, 2020.⁵ As the parties explain:

¹ Dkt. No. 27.

² Dkt. No. 28.

³ LR7.2 (“Motions without opposition and their proposed orders must bear in their caption ‘unopposed.’ They will be considered as soon as it is practicable.”).

⁴ Dkt. No. 28 at 1, ¶ 2.

⁵ *Id.* at 2, ¶¶ 8–9.

the original agreement that the United States and the [Defendant] Harts came to, providing two gates on the Hart's property so as to minimize interference with their business and accommodate access concerns, [is insufficient because the United States must take] more land than originally anticipated. The additional land is necessary to accommodate the access ramps to be built. These gates would need to be installed in order to comply with safety requirements. This fact was unknown at the time of the agreement the United States made with the Harts, as it was only discovered after United States received possession. A project manager learned of the issue regarding safety and structural concerns and indicated that a ramp would be required to accommodate the unforeseen additional 3-foot drop from the levy that would be created by the installed gates.⁶

Because the United States must install additional ramps, it must take additional land to accommodate the ramps, which "requires the United States to amend its declaration of taking."⁷

The parties are agreed that it is in their mutual best interest that the United States file an amended declaration of taking.⁸ The Court finds good cause in this request and **GRANTS** the joint motion for leave to file an amended declaration of taking.⁹ The Court **ORDERS** the Clerk of the Court to immediately file the "First Amendment to Declaration of Taking" attached to the motion¹⁰ as a separate docket entry, which shall constitute the live declaration of taking and supersede the March 10, 2020 declaration.¹¹

The Court now turns to the joint motion to extend scheduling order deadlines. In connection with the additional property that must now be taken, the parties jointly request the Court extend the deadlines in this case by 120 days.¹² The Court finds good cause in the additional time needed to conduct discovery in connection with the amended taking. The Court **GRANTS** the joint motion to extend scheduling order deadlines¹³ as set forth in the following

⁶ *Id.* at 2–3, ¶ 9.

⁷ *Id.* at 3, ¶ 10.

⁸ *Id.* at 4.

⁹ Dkt. No. 28.

¹⁰ Dkt. No. 28-1.

¹¹ Compare Dkt. No. 2 with Dkt. No. 28-1.

¹² Dkt. No. 27 at 3, ¶ 9.

¹³ Dkt. No. 27.

case-specific schedule which controls disposition of this action until further order of the Court.

The following actions shall be completed by the dates indicated:

PRETRIAL EVENTS	DEADLINES
<p>Deadline to file all documentation adding, substituting, disclaiming, or dismissing interested parties.¹⁴</p> <p><u>N.B.</u>¹⁵: If necessary, the United States may also file amended condemnation documents or an amended schedule of interested parties.</p>	December 9, 2020
<p>Deadline for all parties to designate expert witnesses and provide expert reports in accordance with Federal Rule of Civil Procedure 26(a)(2).</p>	January 8, 2021
<p>Deadline for all parties to designate rebuttal expert witnesses and provide expert reports in accordance with Federal Rule of Civil Procedure 26(a)(2).</p>	February 5, 2021
<p>Discovery deadline. Parties may by agreement continue conducting discovery beyond the deadline, but no extension will be granted because of information acquired in post-deadline discovery.</p>	March 4, 2021
<p>Deadline to file all pretrial motions, including any dispositive motions, except motions in limine which shall be filed with the Joint Pretrial Order.</p>	March 25, 2021
<p>Deadline to file joint pretrial order, motions in limine, and proposed jury instructions (or proposed findings of fact & conclusions of law).¹⁶</p>	April 27, 2021
<p>Final pretrial conference and trial scheduling.</p>	May 18, 2021, at 9:00 a.m.

¹⁴ See FED. R. CIV. P. 71.1(c)(3), (i).

¹⁵ See N.B., BLACK'S LAW DICTIONARY (11th ed. 2019) ("Note well; take notice — used in documents to call attention to something important.").

¹⁶ The Joint Pretrial Order must be in accordance with Appendix B of the Local Rules for the Southern District of Texas and must include the disclosures required by Federal Rule of Civil Procedure 26(a)(3).

This scheduling order supersedes any earlier scheduling order, is binding on all parties, and shall not be modified except by leave of Court upon showing of good cause.¹⁷ All other deadlines not specifically set out in this scheduling order will be governed by the Federal Rules of Civil Procedure and this Court's Local Rules.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 30th day of November 2020.



Micaela Alvarez
United States District Judge

¹⁷ See FED. R. CIV. P. 16(b)(4); 6A ARTHUR R. MILLER, MARY KAY KANE & A. BENJAMIN SPENCER, FEDERAL PRACTICE AND PROCEDURE § 1522.2 (3d ed. 1998 & Supp. Oct. 2020).